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REPORT OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

Report of the Secretary-General prepared pursuant to Commission resolution 1995/29

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GE.95-14648 (E)

Introduction

1. In its resolution 1995/29 of 3 March 1995, entitled "Minimum humanitarian standards", the Commission on Human Rights invited all States to consider reviewing their national legislation relevant to situations of public emergency with a view to ensuring that it meets the requirements of the rule of law and that it does not involve discrimination on the ground of race, colour, sex, language, religion or social origin (para. 3).

2. In paragraph 4, the Commission requested the Secretary-General to transmit the text of the Declaration of Minimum Humanitarian Standards adopted by a group of experts at a meeting in Turku (Åbo), Finland, in December 1990 (E/CN.4/Sub.2/1991/55) to Governments and intergovernmental and non-governmental organizations for their comments and to submit a report on this matter to the Commission on Human Rights at its fifty-second session. The text is reproduced as an annex to the present report.

3. Pursuant to this request, the Secretary-General, on 27 September 1995, addressed requests to Governments and competent intergovernmental and non-governmental organizations for their comments on the Declaration of Minimum Humanitarian Standards.

4. By 20 November 1995, replies had been received from the following States: Angola, Mexico, Uruguay.

5. Replies were also received from the International Labour Organization, the Commonwealth Secretariat and the Inter-American Commission on Human Rights.

6. The following non-governmental organization submitted comments: International Institute of Humanitarian Law.

7. The present report contains a summary of the substantive replies received. Any additional replies will be reproduced in an addendum to this document.

I. COMMENTS RECEIVED FROM STATES

A. Angola

[Original: French]
[23 October 1995]

The Government of Angola constantly updates its national legislation in an emergency situation to ensure that it is in keeping with the requirements of the rule of law and does not lead to any discrimination based on race, colour, sex, language, religion or social origin.

B. Mexico

[Original: Spanish]
[15 November 1995]

1. The Government of Mexico recognizes and fully agrees with the concern expressed in various bodies about the urgent need to improve the enforcement of international humanitarian law. It considers that the capacity of impartial humanitarian organizations to provide humanitarian assistance to the victims of armed conflicts has been adversely affected by the outbreak of new international conflicts. Similarly, the growing contradiction between the international obligations of some parties to armed conflicts and the inhuman practices of those same parties has really put international humanitarian law to the test. It must also be borne in mind that the arms trade and the uncontrolled proliferation of weapons of all kinds are a serious affront to respect for the rules of international humanitarian law.

2. Respect for international humanitarian law does not depend at the present time on attempts to formulate new provisions whose main purpose is to broaden the material scope of the relevant legal instruments which are in force, as the Turku Declaration aims to do. Rather, the strengthening of international law calls for new rules which, in view of the basic nature of weapons, prohibit all aspects of weapons which are such as to have indiscriminate effects or cause unnecessary suffering.

3. In the light of the foregoing, the Government of Mexico considers that the Turku Declaration is not an appropriate instrument for improving the situation of the victims of armed conflicts, particularly the civilian population, and for promoting greater respect for international humanitarian law.

4. In the first place, the material scope of the Turku Declaration contradicts the definition of non-international armed conflicts contained in article 1 of Additional Protocol II to the 1949 Geneva Conventions. Although Mexico is not a party to this Protocol, it took part in its negotiation. In this connection, it should be recalled that, during the travaux préparatoires for the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts (1974-1977), it was agreed that account should not be taken of internal disturbances, since human rights instruments cover this type of situation. It should also be pointed out that, in trying to define non-international armed conflicts on the

basis of objective criteria, the international community was of the opinion that the concept of armed conflict is the basic material criterion for any definition, since an armed conflict presupposes the existence of open hostilities between armed forces which are organized to a greater or lesser degree. In the opinion of the International Committee of the Red Cross (ICRC), "Internal disturbances and tensions, characterized by isolated or sporadic acts of violence, do not therefore constitute armed conflict in a legal sense, even if the Government is forced to resort to police forces or even to armed units for the purpose of restoring law and order" (commentary to the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949, International Committee of the Red Cross, Martinus Nijhoff Publishers, Geneva, 1986, pp. 1343-1344).

5. Situations of internal violence, disturbances, tensions and public emergency and other similar situations are therefore not armed conflicts within the meaning of international law. Wanting to formulate rules to govern internal situations, as the Turku Declaration does, thus constitutes interference in matters which are within the internal jurisdiction of States, in accordance with Article 2, paragraph 7, of the Charter of the United Nations, regardless of the humanitarian objectives that may be sought.

6. As stated above, emergency situations (internal disturbances or public emergency) are governed by the universal and regional legal instruments relating to human rights to which Mexico is a party. Such instruments establish minimum rules which are applicable to emergency situations and provide not only that rights may not be suspended under any circumstances, but also state the legal requirements to which any suspension is subject. In such a case, the State party has an obligation immediately to inform the other States parties, through the intermediary of the Secretary-General, of the rights that have been suspended, as well as of the reasons therefor and the date on which the suspension will end (art. 27 of the American Convention on Human Rights and art. 4 of the International Covenant on Civil and Political Rights, for example). It is therefore considered that there is no justification for adopting additional rules of international humanitarian law, since human rights law already exists.

7. Most of the human rights to which articles 3, 4, 6, 7, 8, 9, 10, 11, 12, 13 and 14 of the Turku Declaration refer are already embodied in the various legal and political instruments relating to human rights, as well as in those relating to international humanitarian law. If it was to be supported by the community of States, the Turku Declaration would not develop international law in any way.

8. With regard to article 5, paragraph 3, of the Declaration, it should be emphasized that such recent international legal instruments as the 1992 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction draw a clear-cut distinction between the use of certain conventional weapons in international armed conflicts and their use in internal situations. Thus, the use of a weapon may be prohibited in the first case and not in the second, when it is

necessary for law enforcement including domestic riot control purposes (art. II, para. 9 (d), of that Convention). The same may be said of tear-gas, which is commonly used to maintain law and order, but is prohibited in international armed conflicts by the relevant legal instruments.

9. In connection with article 15 of the Turku Declaration, it should be recalled that the activities of humanitarian organizations should focus on the guiding principles relating to the strengthening of the coordination of humanitarian emergency assistance contained in United Nations General Assembly resolution 46/182 and, in particular, the principle that humanitarian assistance must be provided with the consent of the State concerned.

10. Lastly, the Government of Mexico expresses its most serious reservation about the mechanism that article 2 of the Turku Declaration aims to establish. Notwithstanding the principle that States parties to the Geneva Conventions are under ar obligation to respect and ensure respect for international humanitarian law, it cannot be claimed that this obligation also applies to "all persons, groups and authorities", as provided in article 2 of the Declaration. The objective of the authors of the Declaration is no doubt to provide for "decentralized enforcement of its standards by all who can help and are involved in activities such as monitoring, reporting and peace-keeping, which includes, of course, Governments and intergovernmental and non-governmental organizations, as well as thematic groups and rapporteurs and special country rapporteurs appointed by the United Nations" (Asbjorn Eide, Allan Rosas and Theodor Meron in "Combating Lawlessness in Gray Zone Conflicts through Minimum Humanitarian Standards", American Journal of International Law, vol. 89, No. 1, January 1995, p. 217). In the opinion of the Government of Mexico, the State is the subject of international law par excellence and its prerogatives include that of taking part in the formulation of its rules and ensuring their implementation, without any delegation of such functions to bodies which are not of that nature.

C. Uruguay

[Original: Spanish]
[15 November 1995]

1. First of all, the word "formal" should be included in the last sentence of article 1 of the proposed text in order to strengthen the wording of the obligation that is incumbent on States to respect these standards, notwithstanding any express declaration of a state of emergency that the State might make.

2. Uruguay also considers that the Declaration should contain an additional article specifying that the states of emergency to which the Declaration refers must follow the guidelines drawn up by the Special Rapporteur, Mr. Leandro Despouy, and contained in document E/CN.4/Sub.2/1991/28/Rev.1, regardless of the nomen juris which such situations are given in internal law.

3. Article 3 should also contain two subparagraphs prohibiting the following acts: mass detention of persons on the grounds of race, religion, nationality or political opinion; and the collective expulsion of persons on

the same grounds. In our view, the inclusion of these two subparagraphs would be in keeping with the provisions of article 7, paragraph 2, and article 9 (b) of the draft.

II. COMMENTS SUBMITTED BY SPECIALIZED AGENCIES AND INTERGOVERNMENTAL ORGANIZATIONS

A. International Labour Organization

[Original: English]
[9 November 1995]

1. The ILO's work concentrates mainly on establishing conditions in which normal civic guarantees can be respected. It has nevertheless examined the draft Declaration with interest, as there are some situations in which humanitarian standards are of immediate interest to the ILO.

2. As concerns the preamble, political opinion is omitted from the list of grounds on which discrimination may not be practised. This prohibited ground of discrimination is found in the ILO's Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and should be added here.

3. The draft contains no statement on the right of association, which is provided for in United Nations instruments as well as in ILO Conventions and Recommendations. In this connection, the ILO draws attention to the following passage from the 1994 General Survey on Freedom of Association and Collective Bargaining, adopted by the ILO Committee of Experts on the Application of Conventions and Recommendations at its 1994 session:

> "The freedom of association Conventions contain no provisions allowing the invocation of a state of emergency to justify exemption from the obligations arising under the Conventions or any suspension of their application. This motive is frequently invoked and the exercise of trade union rights is seriously endangered thereby. Such a pretext cannot be used to justify restrictions on the civil liberties that are essential to the proper exercise of trade union rights, except in circumstances of extreme gravity (acts of God, serious disruption of civil order, etc.), and on condition that any measures affecting the application of the Conventions are limited in scope and duration to what is strictly necessary to deal with the situation in question. While it is conceivable that the exercise of some civil liberties, such as the right to public assembly or the right to hold street demonstrations, might be limited, suspended and even prohibited, it is not permissible that, in the field of trade union activities, the guarantees relating to the security of the person should be limited, suspended or abolished.
>
> "The ILO supervisory bodies assess measures taken against workers' or employers' organizations during a political or civil crisis in the light of the exceptional circumstances prevailing at the time to determine independently whether the circumstances invoked by a State justify a temporary exemption from the principles of freedom of association; the States concerned are not allowed to be sole judge of the issue."

4. In the light of this passage, the ILO suggests that it would be appropriate to add to the draft protection of the right to continued freedom of association during times of emergency or crisis, and the need to ensure that "any measures affecting the [right of association] are limited in scope and duration to what is strictly necessary to deal with the situation in question".

5. Article 4 of the draft deals with the situation of persons deprived of their liberty, a subject dealt with extensively in the two ILO Conventions on forced labour: the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105), as well as in the comments of the ILO supervisory bodies on them. Article 4 (4) of the draft does refer to "working and social conditions", but it might be productive to add "in accordance with international human rights standards" to cover a reference not only to the ILO standards but also to the various United Nations standards on human rights in the administration of justice.

6. Article 7 on the displacement of the population in cases of emergency closely reflects the provisions of the ILO's Indigenous and Tribal Peoples Convention, 1989 (No. 169), in particular in including a "right to return" passage. The ILO notes, however, that this article does not cover the need to ensure that displaced populations have a right to some form of economic activity.

B. Commonwealth Secretariat

[Original: English]
[1 November 1995]

1. The Commonwealth, as is set out in the Harare Declaration, is committed to the promotion of human dignity in all circumstances, as one of its fundamental values. Thus, the Declaration, re-emphasizing as it does much of the essential content of the 1977 Protocols to the 1949 Geneva Conventions, is to be welcomed as is adherence to it in practice.

2. The Secretariat, in accordance with the mandate of member States, will continue to promote that essential dignity in cooperation with members. In particular, the Legal and Constitutional Affairs Division stands ready to assist members wherever possible in their efforts to realize the Declaration by, inter alia, steps recommended in Commission resolution 1995/29.

C. Inter-American Commission on Human Rights

[Original: English]
[14 November 1995]

The Inter-American Commission on Human Rights indicated that it had addressed issues relating to the topic of minimum humanitarian standards in the context of its mandate to promote and protect human rights in the hemisphere. In this connection, references were made to chapter IV of its 1994 Annual Report on the "Status of Human Rights in Several Countries"

with regard to Colombia, and to an individual case (Report No. 31/93, Case No. 10,573 of 14 October 1993) concerning the United States action in Panama, referred to in chapter III of its 1993 Annual Report.*

III. COMMENTS SUBMITTED BY A NON-GOVERNMENTAL ORGANIZATION

International Institute of Humanitarian Law

[Original: English]
[14 November 1995]

1. The International Institute of Humanitarian Law has been concerned with humanitarian problems and humanitarian law in the wide sense. It therefore considers it useful and necessary to adopt a declaration on minimum humanitarian standards which would reflect the existing international law and become an act to be respected by all, and which might help to develop the law further. The principles underlying such a declaration are those that have a character of jus cogens, expressing basic humanitarian consideration which are recognized to be universally binding.

2. We consider that such a declaration should cover all possible situations and in particular take into consideration the recent tragic events. This requires that the law applicable in various situations should be studied in order to find out the principles which are common to all these situations which are so complex and different.

3. There are various reasons for the need for such a global approach. Situations of international armed conflicts, of non-international armed conflicts, of disturbances, tensions and other public emergency situations exist, as well as peaceful situations. Specific rules of international law relate to each of these situations. One of them is the very developed system of international humanitarian law applicable in armed conflicts, which should be taken into consideration when elaborating the declaration.

4. In practice, many situations do not correspond to the scheme defined by various international instruments. Therefore, it is not easy to qualify every situation strictly within the limits of one or another branch of law, while the application of specific rules depends upon the legal qualification of the situation in question.

5. Often a situation is qualified by some as falling within one category, by others within a different category. For instance, a conflict may be qualified by the authorities as requiring simply internal police action, and by the opposing side as an armed conflict situation.

6. Some situations produce the use of force or violence by one party only, but they may cause numerous victims and suffering on the part of the population or some individuals.

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* Available for consultation in the files of the secretariat.

7. We consider the Declaration of Turku/Åbo to be one of the working papers, but other documents should also be taken into consideration and studied in order to elaborate a well-balanced and complete text of a declaration. These other texts could include, among others, the Statutes of the ad hoc International Tribunals for the Former Yugoslavia and Rwanda, containing standards of behaviour which are the expression of international customary law.

8. In view of the complexity of the subject, it would be good to form a working group of experts belonging to the main tendencies.

9. Armed conflict situations are often the cause of much suffering requiring the respect of humanitarian standards adopted for such situations. Therefore, any preamble of a declaration should also contain a reference to international humanitarian law, in which humanitarian standards for armed conflict cases are to be found.

10. As the International Institute of Humanitarian Law has been engaged in a wide range of humanitarian issues, it would be useful to consult various texts adopted by its bodies. To this effect we draw attention, among others, to the Declaration of the Protection of Refugees, Asylum Seekers and Displaced Persons adopted in 1989 and the Declaration on the Rules of International Humanitarian Law Governing the Hostilities in Non-International Armed Conflicts, adopted in 1990.* Besides these, there are other documents of the Institute which are available in the search for a declaration on humanitarian standards. The Institute is ready not only to contribute further to the elaboration of a declaration, but it is also ready, if necessary, to host some of the meetings devoted to the preparation of the declaration in question, since our Institute is known as one of the centres for the study of humanitarian issues.

11. Any declaration on humanitarian standards should not omit the mention of certain prevention measures, to help to avoid possible violations of such standards. This mention could be made in the preamble to the declaration.

12. Many situations are characterized by hostilities of various types, which call for the application of the principles of the distinction between combatants and civilians. Therefore, reference should be made to such a distinction. We propose:

> "In the case where the situation is characterized by hostilities, the difference between combatants and civilians shall be made."

13. The declaration should contain a paragraph on precautionary measures. There is a legal obligation to undertake such measures. It should read:

> "All precautionary measures that are feasible in case of attack should be undertaken, so as to avoid unnecessary injury, loss or damage."

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* Available for consultation in the files of the secretariat.

14. Another important principle should be mentioned:

> "In hostilities, it is prohibited to cause superfluous injury or unnecessary suffering."

15. There is another practice which causes great suffering to the population, and that is the scorched earth policy, affecting both individuals and the basic rights of groups. A formulation could read:

> "It is prohibited to attack, destroy, remove or render useless objects indispensable for the survival of the civilian population."

16. Concerning categories of persons deserving special protection, we draw attention to the practice of forced displacement or abduction of children into another territory without leaving any trace, so that the identity of these children, when separated from their families, is not preserved. We propose:

> "In the case of the evacuation of children without their parents to a foreign country, such children should be registered with the appropriate impartial humanitarian organization."

17. Women are a category calling for special mention, as they are exposed to additional forms of violence. An article should be inserted in the declaration which could read:

> "Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any other form of indecent assault. They are entitled to treatment which takes into account their special needs."

18. Refugees and displaced persons are frequently a large category of victims following the use of force or other types of violence. Therefore, a special article may be necessary to mention them:

> "These standards are fully applicable to refugees and displaced persons, who shall enjoy, in addition to the rules contained in this Declaration, also the protection of the principles on which protection of refugees and displaced persons is based. In no case shall they be expelled or returned, in any manner whatsoever, to the frontiers where their lives or freedom would be threatened on account of their race, nationality, membership of a particular social group or political opinion."

19. Medical care is an important humanitarian standard and it should not be impaired by any measure of the international community. This could be expressed in the following way:

> "Basic medical care shall not be significantly reduced through political, economic or other measures undertaken by the international community."

20. Concerning assistance by humanitarian organizations, there is a host of such organizations, many of which do not respect the basic principles on which humanitarian assistance should be based. Therefore, mention should be made of humanitarian organizations which are recognized, which could have access to the victims, and which should act in accordance with basic humanitarian principles. In this connection, we draw your attention to Guiding Principles on the Right to Humanitarian Assistance, adopted by the Institute in 1993.*

21. The right to receive humanitarian assistance is of vital importance for any population exposed to violence or similar injustice. An article should be formulated which could read:

> "The population and individuals have the right to receive humanitarian assistance when suffering undue hardship owing to the lack of supplies essential for their survival, when this is the result of the conflict or violence deployed in that area."

22. It would be important to underline the responsibility for acts which cause suffering. An article should be inserted which could read:

> "Any de jure or de facto authority is responsible for the acts committed by their agents, including acts which adversely affect the basic human rights of any person in emergency situations."

23. The importance of making known, disseminating and teaching these minimum humanitarian standards should be underlined. A clause on that subject could form a special article at the end of the declaration, which could read:

> "The minimum humanitarian standards, defined in this Declaration, should be made known and disseminated to all the authorities concerned, and to individuals who may be potential victims."

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* Available for consultation in the files of the secretariat.

Annex

DECLARATION OF MINIMUM HUMANITARIAN STANDARDS

Adopted by an expert meeting convened by the Institute for Human Rights, Åbo Akademi University, in Turku/Åbo, Finland, 30 November-2 December 1990

Recalling the reaffirmation by the Charter of the United Nations and the Universal Declaration of Human Rights of faith in the dignity and worth of the human person;

Considering that situations of internal violence, disturbances, tensions and public emergency continue to cause serious instability and great suffering in all parts of the world;

Concerned that in such situations human rights and humanitarian principles have often been violated;

Recognizing the importance of respecting existing human rights and humanitarian norms;

Noting that international law relating to human rights and humanitarian norms applicable in armed conflicts do not adequately protect human beings in situations of internal violence, disturbances, tensions and public emergency;

Confirming that any derogations from obligations relating to human rights during a state of public emergency must remain strictly within the limits provided for by international law, that certain rights can never be derogated from and that humanitarian law does not admit of any derogations on grounds of public emergency;

Confirming further that measures derogating from such obligations must be taken in strict conformity with the procedural requirements laid down in those instruments, that the imposition of a state of emergency must be proclaimed officially, publicly, and in accordance with the provisions laid down by law, that measures derogating from such obligations will be limited to the extent strictly required by the exigencies of the situation, and that such measures must not discriminate on the grounds of race, colour, sex, language, religion, social, national or ethnic origin;

Recognizing that in cases not covered by human rights and humanitarian instruments, all persons and groups remain under the protection of the principles of international law derived from established custom from the principles of humanity and the dictates of public conscience;

Believing that it is important to reaffirm and develop principles governing behaviour of all persons, groups, and authorities in situations of internal violence, disturbances, tensions and public emergency;

Believing further in the need for the development and strict implementation of national legislation applicable to such situations, for strengthening cooperation necessary for more efficient implementation of national and international norms, including international mechanisms for monitoring, and for the dissemination and teaching of such norms;

Now, therefore, ...

Proclaim this Declaration of Minimum Humanitarian Standards.

Article 1

This Declaration affirms minimum humanitarian standards which are applicable in all situations, including internal violence, disturbances, tensions, and public emergency, and which cannot be derogated from under any circumstances. These standards must be respected whether or not a state of emergency has been proclaimed.

Article 2

These standards shall be respected by, and applied to all persons, groups and authorities, irrespective of their legal status and without any adverse discrimination.

Article 3

1. Everyone shall have the right to recognition everywhere as a person before the law. All persons, even if their liberty has been restricted, are entitled to respect for their person, honour and convictions, freedom of thought, conscience and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction.

2. The following acts are and shall remain prohibited:

(a) violence to the life, health and physical or mental well-being of persons, in particular murder, torture, mutilation, rape, as well as cruel, inhuman or degrading treatment or punishment and other outrages upon personal dignity;

(b) collective punishments against persons and their property;

(c) the taking of hostages;

(d) practising, permitting or tolerating the involuntary disappearance of individuals, including their abduction or unacknowledged detention;

(e) pillage;

(f) deliberate deprivation of access to necessary food, drinking water and medicine;

(g) threats or incitement to commit any of the foregoing acts.

Article 4

1. All persons deprived of their liberty shall be held in recognized places of detention. Accurate information on their detention and whereabouts, including transfers, shall be made promptly available to their family members and counsel or other persons having a legitimate interest in the information.

2. All persons deprived of their liberty shall be allowed to communicate with the outside world including counsel in accordance with reasonable regulations promulgated by the competent authority.

3. The right to an effective remedy, including habeas corpus, shall be guaranteed as a means to determine the whereabouts or the state of health of persons deprived of their liberty and for identifying the authority ordering or carrying out the deprivation of liberty. Everyone who is deprived of his or her liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of the detention shall be decided speedily by a court and his or her release ordered if the detention is not lawful.

4. All persons deprived of their liberty shall be treated humanely, provided with adequate food and drinking water, decent accommodation and clothing, and be afforded safeguards as regards health, hygiene, and working and social conditions.

Article 5

1. Attacks against persons not taking part in acts of violence shall be prohibited in all circumstances.

2. Whenever the use of force is unavoidable, it shall be in proportion to the seriousness of the offence or the objective to be achieved.

3. Weapons or other material or methods prohibited in international armed conflicts must not be employed in any circumstances.

Article 6

Acts or threats of violence the primary purpose or foreseeable effect of which is to spread terror among the population are prohibited.

Article 7

1. The displacement of the population or parts thereof shall not be ordered unless their safety or imperative security reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the population may be transferred and received under satisfactory conditions of shelter, hygiene, health, safety, and nutrition. Persons or groups thus displaced shall be allowed to return to their homes as soon as the conditions which made their displacement imperative have ceased. Every effort shall be made to enable those so displaced who wish to remain together

to do so. Families whose members wish to remain together must be allowed to do so. The persons thus displaced shall be free to move around in the territory, subject only to the safety of the persons involved or reasons of imperative security.

2. No persons shall be compelled to leave their own territory.

Article 8

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his or her life.

2. In addition to the guarantees of the inherent right to life, and the prohibition of genocide, in existing human rights and humanitarian instruments, the following provisions shall be respected as a minimum.

3. In countries which have not yet abolished the death penalty, sentences of death shall be carried out only for the most serious crimes. Sentences of death shall not be carried out on pregnant women, mothers of young children or on children under 18 years of age at the time of the commission of the offence.

4. No death sentence shall be carried out before the expiration of at least six months from the notification of the final judgement confirming such death sentence.

Article 9

No sentence shall be passed and no penalty shall be executed on a person found guilty of an offence without previous judgement pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by the community of nations. In particular:

(a) the procedure shall provide for an accused to be informed without delay of the particulars of the offence alleged against him or her, shall provide for a trial within a reasonable time, and shall afford the accused before and during his or her trial all necessary rights and means of defence;

(b) no one shall be convicted of an offence except on the basis of individual penal responsibility;

(c) anyone charged with an offence is presumed innocent until proved guilty according to law;

(d) anyone charged with an offence shall have the right to be tried in his or her presence;

(e) no one shall be compelled to testify against himself or herself or to confess guilt;

(f) no one shall be liable to be tried or punished again for an offence for which he or she has already been finally convicted or acquitted in accordance with the law and penal procedure;

(g) no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under applicable law, at the time when it was committed.

Article 10

Every child has the right to the measures of protection required by his or her condition as a minor and shall be provided with the care and aid the child requires. Children who have not yet attained the age of 15 years shall not be recruited in or allowed to join armed forces or armed groups or allowed to take part in acts of violence. All efforts shall be made not to allow persons below the age of 18 to take part in acts of violence.

Article 11

If it is considered necessary for imperative reasons of security to subject any person to assigned residence, internment or administrative detention, such decisions shall be subject to a regular procedure prescribed by law affording all the judicial guarantees which are recognized as indispensable by the international community, including the right of appeal or to a periodical review.

Article 12

In every circumstance, the wounded and sick, whether or not they have taken part in acts of violence, shall be protected and treated humanely and shall receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. There shall be no distinction among them on any grounds other than their medical condition.

Article 13

Every possible measure shall be taken, without delay, to search for and collect wounded, sick and missing persons and to protect them against pillage and ill-treatment, to ensure their adequate care, and to search for the dead, prevent their being despoiled or mutilated, and to dispose of them with respect.

Article 14

1. Medical and religious personnel shall be respected and protected and shall be granted all available help for the performance of their duties. They shall not be compelled to carry out tasks which are not compatible with their humanitarian missions.

2. Under no circumstances shall any person be punished for having carried out medical activities compatible with the principles of medical ethics, regardless of the person benefiting therefrom.

Article 15

In situations of internal violence, disturbances, tensions or public emergency, humanitarian organizations shall be granted all the facilities necessary to enable them to carry out their humanitarian activities.

Article 16

In observing these standards, all efforts shall be made to protect the rights of groups, minorities and peoples, including their dignity and identity.

Article 17

The observance of these standards shall not affect the legal status of any authorities, groups, or persons involved in situations of internal violence, disturbances, tensions or public emergency.

Article 18

1. Nothing in the present standards shall be interpreted as restricting or impairing the provisions of any international humanitarian or human rights instrument.

2. No restriction upon or derogation from any of the fundamental rights of human beings recognized or existing in any country by virtue of law, treaties, regulations, custom, or principles of humanity shall be admitted on the pretext that the present standards do not recognize such rights or that they recognize them to a lesser extent.

Turku/Åbo, 2 December 1990

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REPORT OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES ON ITS FORTY-SEVENTH SESSION

Report of Mr. Ioan Maxim, Chairman of the Sub-Commission at its forty-seventh session, prepared in accordance with paragraph 13 of Commission on Human Rights resolution 1995/26

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Introduction

1. In its resolution 1995/26 of 3 March 1995, entitled "Work of the Sub-Commission on Prevention of Discrimination and Protection of Minorities", the Commission on Human Rights, having expressed its appreciation for the positive contribution made by the Sub-Commission to the promotion and protection of human rights and having noted with appreciation the spirit of cooperation and the continuing dialogue between the two bodies, inter alia reaffirmed that the Sub-Commission could best assist the Commission on Human Rights by providing it with recommendations based on the different views and perspectives of independent experts, which should be appropriately reflected in the report of the Sub-Commission, as well as in the expert studies carried out under its auspices. The Sub-Commission was encouraged to continue to consider all such reforms of its agenda and methods of work that serve the efficiency of its work, better coordination with other organs and mechanisms in the field of human rights, and better dissemination of the results of its work.

2. The Commission reaffirmed that one of the tasks of the Sub-Commission is a thorough examination of information concerning alleged human rights violations, as well as the presentation of the results of the examination to the Commission. The Sub-Commission was also invited to continue to give due regard to new developments in the field of human rights.

3. In paragraph 13 of the resolution, the Commission decided to invite the Chairman of the Sub-Commission at its forty-seventh session to report to the Commission at its fifty-second session on significant aspects of the work of the Sub-Commission.

4. In pursuance of this request, the Chairman of the Sub-Commission submits the present concise report to the Commission. More details regarding the various aspects of the work of the forty-seventh session of the Sub-Commission will be provided, if necessary, by the Chairman of the Sub-Commission in his statement during the fifty-second session of the Commission. The report of the Sub-Commission on its forty-seventh session is before the Commission in document E/CN.4/1996/2-E/CN.4/Sub.2/1995/51.

I. AGENDA OF THE SUB-COMMISSION AND SOME HIGHLIGHTS OF THE SESSION

5. The agenda of the forty-seventh session of the Sub-Commission included 23 items (see annex I to the report of the Sub-Commission). A new item entitled "The fiftieth anniversary of the United Nations and the Sub-Commission" was included on its agenda (decision 1995/102).

6. The consideration of item 12 of the provisional agenda entitled "Human rights and scientific and technological developments" was postponed until the forty-eighth session of the Sub-Commission (decision 1995/101).

7. In its resolution 1995/26, the Sub-Commission decided to consider the issue of human rights of women and the girl child under every item of its agenda, as well as in all relevant studies undertaken by the Sub-Commission.

8. In dealing with its agenda items, the Sub-Commission has borne in mind its complementary role in relation to the work of the Commission on Human Rights and tried to make its own contribution as a body of experts. The Sub-Commission has been pursuing many tasks in the field of prevention of discrimination and intolerance, protection of vulnerable groups, realization of economic, social and cultural rights, observance of human rights in the administration of justice. It considered the situation of human rights in a number of countries and in the fields of contemporary forms of slavery, human rights of detainees, freedom of movement, humanitarian activities and others. The Sub-Commission has also considered communications under Economic and Social Council resolution 1503 (XLVIII) and brought to the notice of the Commission situations which it has reasonable cause to believe revealed a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms.

9. Pursuant to its mandate, the Sub-Commission has continued its research, studies and standard-setting activities in the area of human rights.

10. The attention of the Commission is drawn in this connection to the fundamental study on promoting the realization of the human right to adequate housing undertaken by the Special Rapporteur, Mr. R. Sachar, which was completed at the forty-seventh session of the Sub-Commission. His final report and specific recommendations are contained in document E/CN.4/Sub.2/1995/12.

11. Having considered another final report submitted by the Special Rapporteur, Ms. Erica-Irene A. Daes (E/CN.4/Sub.2/1995/26) and the draft principles and guidelines for the protection of the heritage of indigenous people annexed thereto, the Sub-Commission requested the Special Rapporteur to prepare a supplementary report on the basis of the comments and information received (resolution 1995/40).

12. The attention of the Commission is also drawn to the draft programme of action on the traffic in persons and the exploitation of the prostitution of others (E/CN.4/Sub.2/1995/28/Add.1), which had been reformulated by the Working Group on Contemporary Forms of Slavery and is now transmitted to the Commission with a recommendation for its adoption (resolution 1995/16).

13. Another recommendation stemming from the Sub-Commission provides for the establishment of an open-ended working group of the Commission for the elaboration of policy guidelines on structural adjustment programmes and economic, social and cultural rights (resolution 1995/32).

14. Other proposals of the Sub-Commission involve convening an expert seminar on the practice of forced evictions, organizing a second workshop on a possible permanent forum for indigenous people, establishment of a database on states of emergency and related human rights questions, and updating the resolution of the General Assembly which established the United Nations Voluntary Fund for Indigenous Populations.

15. The Sub-Commission has also recommended the appointment of three new special rapporteurs to undertake studies on the questions of systematic rape and sexual slavery during periods of armed conflict; the implications for

human rights of United Nations action, including humanitarian assistance; and recognition of gross and large-scale violations of human rights as an international crime (see also para. 35 below).

II. ACTION BY THE SUB-COMMISSION ON ITS METHODS OF WORK

16. No sessional working group on the methods of work of the Sub-Commission was established in 1995. However, the Sub-Commission has extensively discussed various questions relating to its role, mandate and organization of work, including those resulting from the implementation of its decision 1994/117 regarding the speaking time, allocation of time and sequence of speaking.

17. As a result of the discussion (see E/CN.4/Sub.2/1995/SR.19-20, 23 and 35), the Sub-Commission decided to adopt, on an experimental basis, the following rulings concerning its methods of work at its forty-eighth session:

(a) All statements in exercise of the right of reply will be made only at the end of the debate on each agenda item;

(b) Denunciations of cases of violations of human rights and specific accusations made under item 6 cannot be repeated under another item of the agenda (decision 1995/112).

18. The Sub-Commission also decided to earmark at least one closed meeting at its forty-eighth session, during which only the members of the Sub-Commission could take the floor, to enable the experts and their alternates to exchange views among themselves on various topics (decision 1995/114).

III. METHODS OF WORK REGARDING THE AGENDA ITEM ON VIOLATIONS OF HUMAN RIGHTS

19. As a follow-up to the discussion held and a confirmation of the decisions adopted at its previous session, the Sub-Commission, in the light of the good results of the practice of considering agenda item 6 at the beginning of the session, 1/ decided to continue that practice and to consider item 6 at its forty-eighth session, in 1996, starting on the day following the adoption of the agenda (decision 1995/113).

20. The Sub-Commission also decided to consider at its forty-eighth session how best to carry out its mandate in examining item 6 of its agenda concerning violations of human rights and fundamental freedoms, while taking into account all reliable sources. In that regard, and taking into account the interest shown in the information contained in the reports of special rapporteurs and chairmen-rapporteurs of working groups of the Commission on Human Rights, the Sub-Commission requested the Secretariat on the one hand to make those reports available to the experts who requested them at the forty-eighth session and on the other hand to undertake appropriate consultations with the special rapporteurs and chairmen-rapporteurs, in particular during their annual joint meeting, so that their preoccupations and those of the Sub-Commission could be taken into account (decision 1995/115).

IV. CONSIDERATION OF NEW DEVELOPMENTS IN THE FIELD OF HUMAN RIGHTS

21. As in the past, the Sub-Commission at its forty-seventh session considered, under agenda item 4 entitled "Review of further developments in fields with which the Sub-Commission has been concerned", the reports submitted by the International Labour Organization and the United Nations Educational, Scientific and Cultural Organization, providing information on developments in their respective activities. Under various items of its agenda, the Sub-Commission also considered 10 letters received from Governments, 58 written statements submitted by non-governmental organizations and a number of documents prepared by the Secretary-General which contained information on new developments relating to various agenda items.

22. The Sub-Commission also focused its attention on new developments in the actual human rights situation in a number of countries and territories based on information submitted to it by members, observer Governments and non-governmental organizations. In particular, the Sub-Commission considered and took action upon such situations in the territory of the former Yugoslavia (resolutions 1995/1, 1995/8 and 1995/10), in the Middle East (resolution 1995/2), in Iraq (resolution 1995/3 and decision 1995/107), in Rwanda (resolution 1995/5), in Colombia (resolution 1995/6), in Guatemala (resolution 1995/7), in the Palestinian and other Arab territories occupied by Israel (resolution 1995/9), in Burundi (resolution 1995/11), in South Africa (resolution 1995/12), in the Islamic Republic of Iran (resolution 1995/18) and in Turkey (decision 1995/108).

23. A number of draft proposals relating to the human rights situation in several other countries and territories were either rejected by a vote or withdrawn by the sponsors (see paras. 210-215, 224-229, 247-249 of the report of the Sub-Commission).

24. Statements were made by the Chairman on behalf of the Sub-Commission on the question of hostage-taking and murder of hostages and on the question of the amnesty law in Peru (see, respectively, paras. 158-163 and 336-338 of the report of the Sub-Commission).

25. Another new subject dealt with by the Sub-Commission at its forty-seventh session was the question of the injurious effects of anti-personnel land-mines (resolution 1995/24).

26. A reference could also be made to Sub-Commission resolutions 1995/4, entitled "Prevention of incitement to hatred and genocide, particularly by the media", and 1995/25, entitled "Protection by competent authorities of everyone against threats, retaliation, pressure or any other arbitrary action as a consequence of legitimate, peaceful and non-violent exercise of the right to strive for the protection of human rights".

27. The Sub-Commission also considered, under agenda item 13 entitled "International peace and security as an essential condition for the enjoyment of human rights, above all the right to life", the question of nuclear tests and the enjoyment of human rights, above all the right to life. No decision

was, however, taken by the Sub-Commission on the draft proposals submitted with regard to this issue (see paras. 372-386 of the report of the Sub-Commission).

28. Similarly, no decision was taken by the Sub-Commission on the draft proposals relating to the question of international terrorism which was discussed under agenda item 4 (see paras. 97-109 of the report of the Sub-Commission).

V. REPORT OF THE CHAIRMAN OF THE FIFTY-FIRST SESSION OF THE COMMISSION ON HUMAN RIGHTS

29. In paragraph 12 of its resolution 1995/26, the Commission on Human Rights invited its Chairman to inform the Sub-Commission on the debate held under Commission agenda item 19 entitled "Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its forty-sixth session: (a) Indigenous issues".

30. Pursuant to that resolution, an invitation was extended to the Chairman of the fifty-first session of the Commission on Human Rights, Mr. Musa bin Hitam. Unfortunately, neither the Chairman nor other members of the Bureau of the Commission on Human Rights were able to come to Geneva to participate in the Sub-Commission's meetings. A statement on behalf of the Chairman of the Commission was read by the Secretary of the Sub-Commission on 14 August 1995 (see E/CN.4/Sub.2/1995/SR.19).

31. Having noted the positive contribution made by the Sub-Commission to the promotion and protection of human rights and the spirit of cooperation between the Commission and the Sub-Commission, the Chairman of the Commission, inter alia, expressed the belief of the Commission that it was essential to maintain as guiding principles the impartiality and objectivity of the Sub-Commission and the independent status of its members and their alternates. The Chairman further stated that the Commission was also convinced that the credibility and effectiveness of the Sub-Commission as an expert human rights body were dependent upon Governments nominating, and the Commission electing as members and alternates of the Sub-Commission, only individuals who possessed genuine expertise in the field of human rights and who were able to act independently of their Governments.

32. The Chairman stressed the valuable role that the Sub-Commission, as a body of independent experts, can play, inter alia in addressing new developments in the field of human rights and also in providing a forum for the contributions of non-governmental organizations towards the noble cause of promoting and protecting human rights around the globe.

VI. REPORTS AND STUDIES

33. In paragraph 5 of its resolution 1995/26, the Commission on Human Rights reiterated its request to the Sub-Commission to implement fully the Guidelines annexed to Sub-Commission resolution 1992/8, including those concerning the number of studies and the requirement of the submission of a preparatory document before a study is entrusted to a special rapporteur.

34. In this regard, the attention of the Commission on Human Rights is drawn to annex V to the report of the Sub-Commission. Part A of the annex refers to two reports by special rapporteurs which were completed at the forty-seventh session of the Sub-Commission. Part B contains a list of eight ongoing studies and reports entrusted to special rapporteurs in accordance with existing legislative authority. Part C refers to the annual report which has been prepared by the Special Rapporteur on a regular basis since 1987. In part D, working papers and other documents are mentioned which are entrusted to members of the Sub-Commission without financial implications. Finally, part E refers to three new studies and reports which are recommended to the Commission on Human Rights for approval (see draft decisions 1, 2 and 3 in chapter I.B of the report of the Sub-Commission).

35. It may be added that, before proposing those three new studies, the Sub-Commission had duly considered the following preparatory documents:

(a) Preparatory document submitted by Ms. Linda Chavez on the question of systematic rape, sexual slavery and slavery-like practices during wartime (E/CN.4/Sub.2/1993/44);

(b) Working paper on the situation of systematic rape, sexual slavery and slavery-like practices during wartime, including internal armed conflict, submitted by Ms. Linda Chavez in accordance with Sub-Commission decision 1994/109 (E/CN.4/Sub.2/1995/38);

(c) Preparatory document submitted by Mrs. Claire Palley on the question of the role of the United Nations in international humanitarian activities and assistance and human rights enforcement, bearing in mind the principle of non-interference (E/CN.4/Sub.2/1993/39);

(d) Definition of gross and large-scale violations of human rights as an international crime: working paper submitted by Mr. Stanislav Chernichenko in accordance with Sub-Commission decision 1992/109 (E/CN.4/Sub.2/1993/10 and Corr.1).

VII. RESOLUTIONS AND DECISIONS

36. On several earlier occasions, the Commission had invited the Sub-Commission to give due consideration to draft resolutions proposed for adoption and to seek the widest possible measure of agreement on them, bearing in mind that such resolutions should be proposed only on subjects that had been thoroughly discussed in the Sub-Commission or in its working groups and should be consistent with its role as a body of independent experts.

37. Pursuant to this request, members of the Sub-Commission, in the drafting of resolutions, decisions or any other proposals, have endeavoured to find the widest possible agreement on them before tabling them. As reflected in the Sub-Commission's reports, 53 resolutions and decisions out of 59 were adopted without a vote, which tends to illustrate the efforts made by the Sub-Commission to work in harmony and in a most constructive manner to carry out its tasks.

38. In this regard chapter II, sections A and B, of the report of the Sub-Commission contains 40 resolutions and 19 decisions adopted at its forty-seventh session. The attention of the Commission is drawn especially to chapter I, sections A and B, containing, respectively, two draft resolutions and 10 draft decisions recommended by the Sub-Commission for adoption by the Commission. Annex IV to the report of the Sub-Commission contains a list of resolutions and decisions referring to matters which are drawn to the Commission's attention and which require consideration or action by the Commission.

VIII. OTHER MATTERS

39. On 8 August 1995, the Sub-Commission, for the second time, 2/ held a joint meeting with the Committee on the Elimination of Racial Discrimination (CERD). The attention of the Commission on Human Rights is drawn to the statement of this joint meeting which was approved on 18 August 1995 (see para. 129 of the report of the Sub-Commission).

40. As in the previous year, the Sub-Commission established a sessional working group on the administration of justice and the question of compensation, under agenda item 10 concerning the question of the administration of justice and the human rights of detainees. Having taken note of the report of the Working Group (E/CN.4/Sub.2/1995/16 and Corr.1), the Sub-Commission requested the Working Group to continue, at the forty-eighth session, the consideration of the basic principles and guidelines proposed by the former Special Rapporteur, Mr. Theo van Boven, in his study entitled "The right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms", with a view to making substantive progress in the matter. Mr. van Boven was requested to submit, without financial implications, for the Sub-Commission's consideration at its forty-eighth session, a revised set of proposed basic principles and guidelines on remedies in the light of existing relevant international instruments (decision 1995/117).

41. Of the 26 members of the Sub-Commission, 25 members were present for most of the session. Neither Mr. Miguel Limón Rojas nor his alternate, Mr. Héctor Fix Zamudio, were able to attend the session. In all other cases, when a member was unable to attend, he or she was, as a rule, replaced by the alternate.

42. The session was also attended by 95 States in their capacity as observers (last year: 89), 7 United Nations bodies (last year: 5), 5 specialized agencies (last year: 3), 6 intergovernmental and other organizations (last year: 3), 1 national liberation movement (same as last year) and 123 non-governmental organizations (last year: 115).

43. Every effort was made to organize the work of the forty-seventh session of the Sub-Commission within the time normally allotted. No additional meetings were made available to the Sub-Commission due to the financial constraints of the United Nations. Only 3 hours 30 minutes of meeting time were lost during the whole session through early ending.

Notes

1/ In its decision 1994/117, the Sub-Commission decided, inter alia, that at its forty-seventh session, on an experimental basis, agenda item 6 entitled "Question of the violation of human rights and fundamental freedoms, including policies of racial discrimination and segregation and of apartheid, in all countries, with particular reference to colonial and other dependent countries and territories: report of the Sub-Commission under Commission on Human Rights resolution 8 (XXIII)" would be considered as soon as the agenda was approved.

2/ The first meeting of the two bodies was held in August 1991.